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IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

TEXAS & PACIFIC RAILWAY COMPANY,
Plaintiff in Error.
vs.
A. R. RIGSBY,
Defendant in Error.
} No. 523

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

SUPPLEMENTAL BRIEF AND ARGUMENT ON BEHALF OF THE DEFENDANT IN ERROR.

S. P. Jones,
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Defendant in Error filed a motion to affirm or dismiss and brief and argument thereon. Upon consideration of said motion, the cause was placed upon the Summary Docket.

Plaintiff in Error has filed an extensive brief on the merits of the case, in which it is contended in substance that the safety appliance laws of the National Congress do not give a cause of action to employees of an interstate railway on which a car not provided with the safety appli-

ances is being used, unless the employee is, at the time of injury, by reason of such defect, engaging in interstate commerce. It also contends that the defective car from which Rigsby fell, by reason of the grab irons not being in compliance with the safety appliance laws, was not being used on an interstate highway at the time of the injury.

The plaintiff in error owned and operated a line of railroad running through Marshall, Texas, east, into the State of Louisiana. It had and operated extensive yards in the City of Marshall, used in connection with its interstate and intrastate business, and owned and operated its principal shops at Marshall where repairs were made, alike on cars engaged in interstate and intrastate commerce. The car in question had been stored on one of the tracks in said yard, and was switched therefrom on to the main line of the road where Rigsby set the brakes in the regular discharge of his duties, and attempted to leave the car when he was injured by reason of a defect in the grab irons on the car.

The plaintiff in error is what is known as a Federal or National corporation, deriving its powers from an act of the Congress of the United States entitled, "An act to incorporate the Texas & Pacific Ry. Co., and to aid in construction of its road, and other purposes," approved March 2, 1871, and an act supplementary thereto, approved March 2, 1872, the charter of which this Court will take judicial notice (Texas & Pacific Ry. Co. vs.

Cody, 166 U. S., 606) makes it a military and Post road, and empowers it to build a road that must necessarily be an interstate highway.

The yards and sidetracks of the plaintiff in error at Marshall are so intimately connected and associated with the interstate highway as to necessarily form a part thereof. The shops of the railroad at Marshall are so closely connected with the interstate highway as to reasonably be considered as a part thereof. Any movement of the car on any of the tracks in the said yard constituted a use thereof on an interstate highway within the meaning of the safety appliance laws; certainly any use or movement of the car on the main line of the road between Texas and Louisiana constituted a use thereof on an interstate highway, and it is not material whether such use or movement was for a distance of a few hundred yards or a few miles, for the protection is one of principle, and not of degree.

The testimony clearly shows that when the defendant in error was injured, the defective car was on an interstate highway. (See Tr. 20). "When I fell from the car it was on the main line of defendant's railroad. This main line runs from the passenger depot in Marshall to New Orleans, La." (See Tr. 40, bottom of page). "It was admitted that freight trains run over the main line of the defendant from Marshall, Texas, to Shreveport and New Orleans, La., a number each day, and three passenger trains each day each way." (Again Tr. 44.) "There

are three passenger trains each day each way, and four or five freight trains a day each way." (Also p. 49 Tr.) "The Marshall shops were the main repair shops for the road, both in Texas and Louisiana."

There is no merit in the contention of plaintiff in error that Congress has not the power to give to employees of an interstate highway, who are not at the time engaging in interstate commerce, a right of recovery for a failure of the Railway Company to equip the cars that are being used on the interstate highway with safety appliances, for as was inferentially stated in the first Employers' Liability case, 207 U. S., 461, and as directly stated in the case of Illinois Central Railway Company vs. Behrens, 233 U. S., 471, the nature and extent of power confided to Congress by the commerce clause of the Constitution is such that there can be no doubt that the liability of the carrier for injuries suffered by a member of a switching crew, in the course of its regular work in service on an interstate highway, is subject to regulation by Congress, whether the particular service being performed at the time of the injury, isolatedly considered, was interstate or intrastate.

The recent case of Great Northern Co. vs. Otis, decided by this Court on December 13, 1915, emphasizes the doctrine set forth in the safety appliance statutes, that where a car was being switched or handled for the purpose of placing it at a place necessary for repairs is handled at the sole risk of the railway company, insofar

as the employees of the railway company may be injured by such handling.

In view of the decisions of this Court it is very clear that Congress has the power to provide that all persons injured, by reason of the carrier using a car on an interstate highway not provided with the safety appliances, shall recover damages, though the employee, himself, may not have at the time been engaging in interstate commerce. It is therefore only important to consider whether the provisions of the safety appliance laws are broad enough to apply to all persons injured by reason of cars being used on an interstate highway not equipped with the safety appliance devices.

Some argument is made that the safety appliance laws do not protect any employees, except those engaged in coupling and uncoupling cars, but an examination of the laws and amendments thereto clearly shows that this is an erroneous view, for in the amendment approved April 14, 1910, it is expressly provided in Section 2 that common carriers engaged in interstate commerce shall equip its cars with secure ladders and running boards, which could, of course, have no other meaning than to protect employees engaged just as Rigsby was engaged at the time he was injured. Section 4 of said amendment provides that where the car shall become defective, and that repairs not be made at the place where it becomes defective, that it may be hauled to the nearest place where such repairs can be made without incurring the penalty;

but "such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of, or in connection with, the movement or hauling of such car with equipment which is defective or insecure, or which is not maintained in accordance with the requirements of this act, and the other acts herein referred to." The other acts referred to, we find, by an examination of Section 1 of that amendment, to be all of the safety appliance acts, beginning with 1893 down to, and including the said amendotary act, approved April 4, 1910. Each and every amendment of the original safety appliance act of 1893 contains provisions that aptly extend the provisions of Section 8 of the original act regarding remedial actions for damages in behalf of injured employees so as to protect persons injured by failure of a compliance with the respective amendments to said law. If it had not been the purpose of Section 2 of the amendment of April 14, 1910, to extend the benefits and protection to persons using the cars in other ways than for coupling and uncoupling, it would not have been at all necessary to have referred to running boards with secure grab irons to the roof of the car, and therefore, there is no merit in the contention that the beneficent effects of this legislation did not, when Rigsby was injured, extend to persons engaged in climbing to and from the top of the cars.

Under the decisions of the Supreme Court of the United States, especially the first safety appliance case, 207 U. S., 461, and the case of Illinois Central Railway Company vs. Behrens 213 U. S., 471, it is clear that the commerce clause of the constitution authorizes Congress to legislate for the protection and safety of all employees of railroads engaged in interstate commerce in such a way as to protect such employees while working on said interstate highway in a capacity that may endanger the safety of interstate traffic, though the employee at the time of the injury be not himself engaging in interstate commerce, just as Congress has power to prescribe a penalty for a carrier operating an interstate highway, permitting an intrastate car, not equipped with the safety appliances, to be in use on an interstate highway.

The amendment to the safety appliance laws, approved March 2, 1903, extends its scope and protection to all cars being used on any railroad engaged in interstate commerce, and makes the carrier liable for the penalties and, in remedial actions, for damages, just as the original act of 1893 made it liable for the penalties and in actions for damages where the defective cars were used in interstate commerce. The amendment of 1910 extended the scope thereof, by making it liable for the penalties and in damages for the use and movement of cars with defective grab irons and running boards, and permitted the cars to be moved or hauled to the nearest place for repair without the carrier incurring the penalty,

but emphatically and unconditionally placed upon the carrier the burden of paying damages sustained by an employee while such car was being used, hauled or moved on any interstate highway, regardless of whether the car was being used in interstate commerce, or whether the employee was at the time engaging in interstate commerce, or solely in intrastate commerce.

The yards and sidetracks of the plaintiff in error at Marshall, Texas, being a part of the interstate highway or system and at all times essential to its business of making up and breaking up interstate trains, any use or movement of the car upon any of the tracks in the said yard constituted a movement or use thereof upon an interstate highway or upon a railroad engaged in interstate commerce, and made the plaintiff in error liable for all injuries that were inflicted upon its employees while the said car was being moved in said defective condition, regardless of whether the car or the employee was at the time of the injury engaging in interstate commerce. Certainly, so soon as the car was placed upon the main line of the said interstate highway, and on that part of the main line of the said interstate highway between Texas and Louisiana, any use or movement of the car thereon, whether for a few hundred feet or for several miles, rendered the railway company liable for all damages that resulted from the use of the car in such defective condition.

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